



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
TENNESSEE REAL ESTATE COMMISSION
TENNESSEE REAL ESTATE COMMISSION MINUTES

February 4, 2015

The Tennessee Real Estate Commission convened on Wednesday, February 4, 2015 at 9:00 a.m. in Meeting Room 1A of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, Tennessee 37243. The following Commission Members were present: Chairman John Griess, Vice-Chairman Janet DiChiara, Commissioner Grover Collins, Commissioner Diane Hills, Commissioner Marcia Franks, Commissioner Gary Blume, and Commissioner Wendell Alexander. Absent from meeting Commissioner Austin McMullen. Others present: Executive Director Eve Maxwell, Education Director E. Ross White, Assistant General Counsel Keeling Baird, Paralegal Jennaca Smith, and Administrative Secretary Kimberly Smith.

Ms. Maxwell read the following statement into the record: This meeting's date, time, and location have been noticed on the TN Real Estate Commission's website, included as part of this year's meeting calendar, since August 12, 2014. Additionally, the agenda for this month's meeting has been posted on the TN Real Estate Commission's website since Thursday January 29, 2015. Also, this meeting has been notice on the tn.gov website since Friday, January 30, 2015.

Commissioner DiChiara made a motion to approve the February 2015 agenda; seconded by Commissioner Hills; Commissioner Hills amended the agenda to add a discussion of how out of state Principal Brokers fit into the Broker Act prior to the Executive Directors Report; motion carries.

Commissioner DiChiara made a motion to defer approval of January 2015 minutes until additional comments are made to the minutes reflecting summary of rulemaking hearing; seconded by Commissioner Hills; motion carries.

INTRODUCTIONS OF NEW EMPLOYEES

Deputy Commissioner Bill Giannini, along with Assistant Commissioner Brian McCormack and Accountant Bill Huddleston attended the meeting to discuss the FY 2014 briefly and answer any questions regarding the budget.

The Commission asked Deputy Commissioner Giannini about the legislation introduced on extending the time period for a response to a complaint from initial 10 days to 30 days for respondent to reply. With much discussion, Commissioner DiChiara made a motion to adopt a policy that states an initial response will have an additional 20 days to provide substantive response with a maximum of 30 days for response, motion seconded by Commissioner Franks; motion carries.

INFORMAL APPLICANT APPEARANCE

APPLICANT: George Alan McAlister #331042

PRINCIPAL BROKER: Steve Black #261397

FIRM: CLEVELAND REALTY PARTNERS, LLC
d/b/a KELLER WILLIAMS REALTY

Principal Broker: Steve Black #261397 is the Principal Broker of Cleveland Realty Partners, LLC d/b/a Keller Williams Realty # 260060 located in Cleveland, TN. Mr. Black was first licensed as an affiliate broker on 7/2/1996 and was first licensed as a broker on 12/14/2001. Mr. Black became the Principal Broker of Cleveland Realty Partners, LLC d/b/a Keller Williams Realty as of 8/30/2007. The TREC records reflect that the firm currently has 40 affiliate brokers and 7 brokers. Mr. Black has not had any complaints filed against him by the Commission.

Applicant: George Alan McAlister has taken and passed the national and the state exams and has applied for licensure as an affiliate broker. Mr. McAlister has revealed the following in his Application for Licensure:

Mr. McAlister had several felonies; he has completed all requirements ordered by the Court and his probation terminated 5/1991. Upon petition to the court by Mr. McAlister, on 6/25/2007, the Circuit Court of Bradley County, Tennessee restored Mr. McAlister's full citizenship rights.

Commissioner Blume made a motion to approve Mr. McAlister to continue with the licensure process; motion seconded by Commissioner Hills; motion carries.

EDUCATION COURSES FOR DISCUSSION

Mr. White, the new Education Director, presented the educational courses and instructors set forth on the February, 2015 Education Report for Commission Approval.

Commissioner DiChiara made a motion to approve F-1 – F-22 courses; motion seconded by Commissioner Franks; motion carries.

After discussion of TREES, TREC CORE (F23 & F24) Commissioner Blume made a motion to approve F23 and F24; motion seconded by Commissioner DiChiara; motion carries unanimously.

After discussion of Clarksville Association of Realtors, Realtor Safety Course (F25) Commissioner Franks made a motion to approve F25; motion seconded by Commissioner Hills; motion carries unanimously.

After discussion of Greater Chattanooga Association of Realtors, Common Self Defense Program Level One (F26) Commissioner DiChiara made a motion to approve F26; motion seconded by Commissioner Franks; motion carries unanimously.

After discussion of Memphis Association of Realtors, Roadmap to Success (F27) Commissioner Franks made a motion to approve F27; motion seconded by Commissioner DiChiara; motion carries unanimously.

After discussion of Carter Real Estate, TREC CORE (F28) Commissioner Alexander made a motion to defer F28 until March 4, 2015 board meeting or the next meeting when all revised portions of the course have been submitted and recommended for approval by Mr. White; motion seconded by Commissioner Collins; substitute motion by Commissioner Blume the class will be approved upon meeting Mr. Whites requirements when course is resubmitted; motion seconded by Commissioner Hills; roll call vote 3 yes and 4 no; motion fails. Original motion to defer till March 4th, 2015 board meeting; roll call vote 7 yes; motion carries.

After discussion of D & D School of Real Estate, TREC Core (F29) Commissioner Franks made a motion to approve F29; motion seconded by Commissioner DiChiara; motion carries unanimously.

(F30 was never on report F1 – F31)

After discussion of TAR, Team Dynamics (F31) Commissioner Alexander made a motion to defer indefinitely F31; motion seconded by Commissioner Blume; motion carries unanimously.

Instructors Approvals

Education Director, Ross White presented the following people to be approved as Instructors:

Mr. Scott Wickard F1 and F2, Bridgett Parkes and Bryan Thomas F3, James Murphy and Chris Bowles F4, Mark Polon and Barbara Crane F5, Karen Schultz, Rae Stewart, and Carol Sweet F8 and F9, Carol Campbell F10, Nobu Hata F12, John Acuff F13, Trisda Curzydlo F14 and F15, Pamela Ermen F16 and F31, Jeanne LaMere F19-F22, Randy Worcester F25, and James Hogwood F26.

Commissioner DiChiara made a motion to approve all instructors that Education Director White recommended for approval; motion seconded by Commissioner Franks; motion carries 6 yes and 1 pass by Commissioner Collins; motion carries.

LEGISLATIVE UPDATES

Executive Director Maxwell reported on 3 bills that have been introduced and which if passed and signed into law, could potentially revise provisions of the Broker Act with real estate:

62-13-313 (a) (2), is amended by deleting the language “ten (10)” and substituting the language “thirty”.

62-13-207 is amended by deleting the section and substituting the following:

- (a) The commission shall have an executive director. The commission shall see the qualifications that are necessary for the position of executive director. The executive director shall be appointed by the commission, with the approval of the commissioners of human resources. The term of executive director shall be for four (4) years, and the executive director shall be eligible for reappointment. The commission shall also retain and administrator and other staff members that the commission may deem necessary and proper. The commission shall fix the compensation to be paid to the executive director, the administrator, and the staff of the commission, subject to applicable rules and laws.
- (b) The commission shall a full-time director of education. The director of education shall have a college degree from an accredited university.

62-13-324 is amended by adding the following language as a new, appropriately designated subsection:

The real estate commission shall approve any continuing education course that consist of a minimum of one (1) classroom hour in length; provided that the course meets all of the requirements of the commission that are not related to course length. Any rule, policy, or requirement of the real estate commission that is in conflict with this subsection is superseded.

COMMISSION ADDRESS COMMISSIONER HILLS QUESTION

Pursuant to Commissioner Hills request to amended agenda, there was a discussion of many Principal Brokers live out of state, but have firm address in TN?

Ms. Maxwell explained according to rule 1260-2-.01 SUPERVISION OF AFFILIATE BROKERS.

- (1) No licensee shall engage in any real estate activity in any office unless there is a principal broker who devotes his full time to the management of such office.**
- (2) No principal broker shall engage a licensee (other than as a property manager) who lives more than fifty (50) miles by a straight line calculation from the firm office, unless the principal broker demonstrates in writing to the Tennessee Real Estate Commission’s satisfaction that the distance involved is not unreasonable and that adequate supervision can be provided. For purposes of this rule, a property manager is defined as a licensee who engages exclusively in leasing and otherwise managing rental properties.**
- (3) A licensee may be engaged only by a principal broker who is:**
 - (a) engaged primarily in the real estate business; and**
 - (b) accessible during normal daytime working hours.**

The Commission agreed that Ms. Maxwell could obtain statistics on this question for presentation at the March, 2015 meeting.

LEGAL REPORT, KEELING BAIRD, ASSISTANT GENERAL COUNSEL

At the beginning of the text of each legal report (complaint report) the following text is inserted and Ms. Baird read it into the record: "Any consent order authorized by the Commission should be signed by Respondent and returned within thirty (30) days. If said consent order is not signed and returned within the allotted time, the matter may proceed to a formal hearing."

Attached to the end of these minutes is a copy of the legal report with all decision indicated.

- 1. 2013025311**
Opened: 1/15/14

First License Obtained: 6/20/83

License Expiration: 8/31/14

E&O Expiration: 1/1/15

Type of License: Principal Broker

History: No Prior Disciplinary Action

The following matter was presented in April, 2014. Respondent accepted and paid the Consent Order. Respondent was scheduled to attend the December, 2014 meeting but became ill and passed away.

April 2014 Meeting:

TREC opened complaint based on a received MLS printout of multiple listings (some of which are in active status and some show a status of closed) wherein Respondent (principal broker) is the listing agent and Respondent's firm is the listing office. The MLS printout is dated in December 2013, and, at that time, Respondent's firm license was expired. According to TREC records, it appears that Respondent's firm license expired on May 6, 2013.

Respondent reapplied for re-licensure of the firm, and Respondent's firm again obtained an active license on January 7, 2014. Respondent submitted no response to the complaint.

Previous Recommendation: Consent Order for \$1,500 for failing to have an active firm license and failing to respond to a complaint filed with the Commission in violation of T.C.A. §§ 62-13-312(b)(14), 62-13-309(a)(1)(A), and 62-13-313(a)(2) plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

PREVIOUS DECISION: The Commission voted to authorize a Consent Order for \$2,000 for failing to have an active firm license and failing to respond to a complaint filed with the Commission in violation of T.C.A. §§ 62-13-312(b)(14), 62-13-309(a)(1)(A), and 62-13-313(a)(2) plus attendance by Respondent at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

Recommendation: Close the case with no further action.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Commissioner Franks made a motion to accept counsel recommendation to close the case with no further action; motion seconded by Commissioner Hills; motion carries.

2. 2014017151

Opened: 8/20/14

First License Obtained: 4/12/96

License Expiration: 3/4/15

E&O Expiration: 1/1/17

Type of License: Principal Broker

**History: 200707315 (\$1,000 Consent Order-Failure to provide E&O for affiliate),
200708654 (Agreed Citation-Failure to timely complete CE)**

**3. 2014017152 (unlicensed)
Opened: 8/20/14**

History: No history of disciplinary action.

January 2015 meeting:

Complainant states that Respondent 2 (unlicensed) is presenting oneself as a licensed realtor on Facebook. Complainant states that Respondent 2 is working with Respondent 1's (Principal Broker) firm. Complainant states that listings are being posted without permission of the listing agents with much higher list prices than the actual list price. Complainant further states the firm is offering private financing with interest rates of 9% or higher. Complainant further states that Respondent 2 is asking buyers to submit very high down payments and guaranteeing financing with no documentation. Complainant further states that Complainant has met with several potential buyers who worked with Respondents and states that potential buyers were not given a copy of any executed documentation.

The complaint was forwarded to Respondents but returned unclaimed. Neither Respondent responded to the complaint.

Office of legal counsel researched the Facebook profile on 12/1/14 for Respondent 2. It appears that the most recent post was dated October 18, which included a property address, short description and photographs. Further, the name on the page appears to be a Spanish phrase that can be translated to "Want to buy a house," and the "About" section states Respondent 2's first name and last initial.

Respondent 1's firm also has a Facebook profile, and it appears that a photo was posted on or about March 8, 2013 that includes five (5) individuals, none of which are named. The photograph also includes the firm name, stock photos demonstrating homes being sold, but it does not include a telephone number. A second picture shows the same five (5) individuals listed in the picture and includes names and job titles. It appears that two (2) of the five (5) individuals are actively licensed with TREC—one of which is Respondent 1. The other three (3) do not appear to be currently licensed with TREC.

Previous Recommendation: For Respondent 1, Consent Order with a civil penalty in the amount of \$500 for violations of T.C.A. § 62-13-312(b)(14) and 62-13-313(2) for failure to respond, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order.

For Respondent 2, Consent Order with a civil penalty in the amount of \$500 for unlicensed activity in violation of T.C.A. §§ 62-13-102(4)(A), 62-13-103 and 62-13-301, said order to also include order to cease and desist all unlicensed activity.

PREVIOUS DECISION: For Respondent 1, Consent Order with a civil penalty in the amount of \$1,000 for violations of T.C.A. § 62-13-312(b)(14) and 62-13-313(2) for failure to respond, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order.

For Respondent 2, Consent Order with a civil penalty in the amount of \$1,000 for unlicensed activity in violation of T.C.A. §§ 62-13-102(4)(A), 62-13-103 and 62-13-301, said order to also include order to cease and desist all unlicensed activity.

Respondent 1 received the Consent Order and submitted a response to the complaint. Respondent states that Respondent was not aware of the complaint and would have responded timely. Respondent states that after notification of the complaint, Respondent contacted all parties except for Complainant. Respondent denies knowing Complainant, but spoke with Complainant's managing brokers and determined that they were only aware that a complaint had been filed but not the details of the complaint. Respondent 1 denies knowing Respondent 2. Respondent 1 states that an agent in Respondent 1's office has recently worked with Respondent 2 solely to translate for a few of the agent's clients. Respondent 1 requests that the Commission reconsider and dismiss the complaint.

Recommendation: Discuss.

DECISION: For Respondent 1, uphold the previously authorized Consent Order with a civil penalty in the amount of \$1,000 for violations of T.C.A. § 62-13-312(b)(14) and 62-13-313(2) for failure to respond, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order.

For Respondent 2, rescind the previously authorized Consent Order and dismiss.

Commissioner Blume made a motion to accept councils previous decision regarding respondent one; uphold the previously authorized Consent Order with a civil penalty in the amount of \$1,000 for violations of T.C.A. § 62-13-312(b)(14) and 62-13-313(2) for failure to respond, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order; motion seconded by Commissioner Alexander; motion carries.

Commissioner Blume made a motion to rescind the previously authorized Consent Order and dismiss regarding respondent two; motion seconded by Commissioner Hills; vote 6 yes and 1 no by Commissioner Franks; motion carries.

4. 2014019591
Opened: 8/21/14

First License Obtained: 1/4/94

License Expiration: 8/9/16

E&O Expiration: 1/1/17

Type of License: Broker

History: No history of disciplinary action.

A complaint was filed by a potential buyer for a property that was listed by Respondent. Complainant states that the home was listed as a three (3) bedroom home. Complainant states that Complainant's offer was accepted and alleges that the home inspection report stated that the two (2) spare bedrooms do not qualify as bedrooms because they do not have windows or closets. Complainant requested that Respondent reimburse the inspection fee but was denied by Respondent and Principal Broker. Complainant filed an ethics complaint with the local association of REALTORS, and the hearing panel determined that Complainant did not meet the burden of proof that Respondent was knowingly dishonest or untruthful. Respondent did not submit a response to the complaint.

Recommendation: Consent Order with a civil penalty in the amount of \$500 for violations of T.C.A. § 62-13-312(b)(14) and 62-13-313(2) for failure to respond, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order.

DECISION: Consent Order with a civil penalty in the amount of \$1,000 for violations of T.C.A. § 62-13-312(b)(14) and 62-13-313(2) for failure to respond, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

Commissioner Alexander made a motion for a Consent Order with a civil penalty in the amount of \$1,000 for violations of T.C.A. § 62-13-312(b)(14) and 62-13-313(2) for failure to respond, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order; motion seconded by Commissioner Franks; motion carries.

5. **2014019621**
Opened: 8/21/14

First License Obtained: 3/25/85

License Expiration: 2/17/15

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No history of disciplinary action.

TREC opened a complaint for a potential failure to supervise above-referenced Respondent (hereinafter “affiliate broker”) in previous complaint number 2014019591. Respondent states that the property has been listed as a three (3) bedroom home by three (3) separate listing agents. Respondent states the seller purchased the home directly from the original owner/builder. Respondent further states that seller’s previous home inspection did not note that the two bedrooms in the basement were not classified as bedrooms.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Commissioner Alexander made a motion to accept the recommendation of legal counsel a Consent Order with a civil penalty in the amount of \$1,000 for violations and (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent’s execution of Consent Order; Commissioner Blume seconded motion; roll call vote 5 no and 2 yes; motion fails. Commissioner DiChiara made a motion to accept the recommendation of legal counsel to dismiss; Commissioner Collins seconded motion; vote 5 yes and 2 no; motion carries.

6. **2014020001**
Opened: 8/18/14
- First License Obtained: 3/14/85**
- License Expiration: 9/4/15**
- E&O Expiration: 1/1/17**
- Type of License: Affiliate Broker**
- History: No history of disciplinary action.**

Respondent was arrested and detained for violation of the Tennessee Peeping Tom statute and destruction of property. Respondent attended a hearing of summary suspension with the Tennessee Auctioneer Commission, and an informal conference was held. The companion complaints with the Tennessee Auctioneer Commission and Tennessee Motor Vehicle Commission are currently in litigation monitoring pending the outcome of criminal proceedings.

Recommendation: Litigation Monitoring.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Commissioner DiChiara made a motion to accept council's recommendation of legal counsel for Litigation Monitoring; motion seconded by Commissioner Collins; motion carries.

7. **2014020011**
Opened: 8/18/14
- First License Obtained: 11/18/13**
- License Expiration: 11/17/15**
- E&O Expiration: 1/1/17**
- Type of License: Affiliate Broker**
- History: No history of disciplinary action.**

Respondent was indicted with charges of official misconduct and solicitation of tampering with evidence for requesting and receiving inappropriate images of a minor via text messages and attempted to destroy the victim's phone. Respondent plead guilty to both offenses and was convicted of Class E felonies.

Recommendation: Consent Order for voluntary revocation of Respondent's license in violation of T.C.A. § 62-13-312(b)(12), (20).

DECISION: The Commission voted to accept the recommendation of legal counsel.

Commissioner Collins made a motion to accept council's recommendation of legal counsel a Consent Order for voluntary revocation of Respondent's license in violation of T.C.A. § 62-13-312(b)(12), (20); motion seconded by Commissioner Franks; motion carries.

8. **2014020021**
Opened: 8/18/14

History: 201402057 Closed with Letter of Instruction,
201403186 Closed with Cease & Desist Letter

9. **2014020022**
Opened: 8/18/14

History: No history of disciplinary action.

A complaint was filed by a law firm who represents a consumer who owns a timeshare. Complainant alleges that the timeshare owner paid Respondents \$36,277.84 to cover various alleged costs and expenses related to the transfer of their timeshare. Complainant alleges that in transferring the timeshare, Respondents have agreed to disburse \$91,175.84 and reimburse previously paid costs. Complainant alleges that Respondents stated that this amount would be disbursed by July 25, 2014 but have not done so to-date.

The complaint was mailed to Respondents, and both were returned as undeliverable. The complaint was also emailed to Respondents in care of a TREC licensee, who responded to the complaint stating that it has come to his attention that he has been mistakenly associated with the complaint, and the licensee has no connection to Respondents. The licensee states that he has never been involved with timeshare transactions. The licensee suggests that there must be another individual with his name who is involved in the subject transaction.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Commissioner Collins made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Franks; motion carries.

10. 2014020031
Opened: 8/18/14

First License Obtained: 2/14/07

License Expiration: 10/12/15

E&O Expiration: 1/1/17

Type of License: Broker

History: No history of disciplinary action.

A complaint was filed by a consumer who engaged Respondent to purchase a home. Complainant alleges that Respondent did not protect Complainant's interests and assisted sellers in a fraudulent transaction. Complainant states that sellers, who were previously brokers, did not disclose certain problems with the home including basement leakage, plumbing problem(s), ceiling damage, and a foundation crack. Complainant states that Respondent urged Complainant to use a specific mortgage company, and the mortgage company urged Complainant to use an appraiser who happened to have the same last name of the sellers—who Complainant states did not use adequate comparable sales.

Respondent states that Complainant did not want to sign a buyer's agency agreement, so Respondent acted as a facilitator in the sale. Respondent admits to knowing of the sellers but states Respondent never had any previous dealings with sellers. Respondent states that Respondent worked in the best interest of Complainant and has no knowledge for sellers acting fraudulently against Complainant. Respondent states that after the purchase, Complainant told Respondent of the shower leak, and Respondent recommended several plumbers and was under the impression that the problem was fixed and Complainant was happy with the home. Respondent further states that Respondent referred Complainant to the only mortgage company Respondent knew who did VA loans, but Respondent encouraged Complainant to research deferent lenders. Respondent further states that Respondent spoke with sellers' agent before the appraisal, and sellers stated they were not related to the appraiser. Respondent further states that Complainant's friend/inspector did not show up to the scheduled inspection, and Respondent advised Complainant to re-schedule, but Complainant never did. Respondent denies that any party took advantage of Complainant during the transaction.

Complainant submitted additional information regarding the home damage, stating that it was not disclosed correctly. Complainant denies telling Respondent that Complainant was happy with the home. Complainant further alleges that Respondent previously worked with one of the sellers at a deferent real estate company. Complainant feels that because Complainant did not have the money to hire a realtor, Respondent took advantage of Complainant by not inquiring about the home in more detail.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Commissioner Franks made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Collins; motion carries.

11. 2014020041
Opened: 8/18/14

First License Obtained: 10/26/83

License Expiration: 8/10/16

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No history of disciplinary action.

TREC opened a complaint against Respondent, Principal Broker, for failure to supervise previous Respondent (hereinafter "Affiliate Broker") in case number 2014020031. Respondent states that Respondent was involved in the subject transaction from the beginning, and Affiliate Broker did her level best and looked after Complainant's best interest even though a Buyers Representation Agreement was not signed. Respondent states the listing agent supplied Respondent with disclosures and information about the home, which Affiliate Broker presented to Complainant. Respondent states that Affiliate Broker recommended a home inspection, but Complainant decided to have a friend look at the home instead of a licensed home inspector, but the friend did not show. Respondent states Affiliate Broker offered to set up another appointment, but Complainant declined. Respondent states that Respondent supervised Affiliate Broker, who went above and beyond the duty as a facilitator and is sorry that Complainant felt the need to file a complaint because Complainant seemed perfectly satisfied with the home.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Commissioner Franks made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Collins; motion carries.

12. 2014020071
Opened: 8/18/14

History: No history of disciplinary action.

A complaint was filed alleging that Respondent, Registered Agent for an LLC, engaged in unlicensed activity. Complainant states that the LLC, along with its affiliated LLCs, acquired over 100 properties with the intent to redevelop properties into detached duplexes. Complainant states that the LLC hired unlicensed individuals, representing themselves as investors, to solicit and entice homeowners to sell their property. Complainant states that the purchase contracts were very simple and were in favor of the buyer. Complainant further states that licensed brokers also assisted in purchasing the properties below fair market value and received commissions between 6% and 200% of the seller's sales price through illegal net listings. Complainant attached a website that includes a listing of 51 properties and a description stating the company, "provides a full ranges of services to the residential community...contact us if you are interested in selling your land or house, buying one of our available properties..."

Respondent submitted a response through an attorney and states that Respondent did not receive a fee, commission, or valuable consideration arising from the purchase of real property, as would a broker. Respondent states that in Respondent's role as Principal and President of the LLC, Respondent acted solely in the capacity of a buyer. Respondent offered for the entity to purchase properties from the owner, and if the offer was accepted, the property was purchased, but at no time did Respondent act as broker. Respondent denies employing unlicensed agents and states that the company dealt with independent third parties who were free to contract to sell to the company or to anyone else with whom they reached a deal. Respondent further states that Complainant did not provide any factual basis to support the allegation.

Office of legal counsel requested documentation regarding properties bought or sold on behalf of the LLC. Respondent provided settlement statements for various transactions between deferent subsidiaries of the LLC. Respondent states that Respondent is President and has a minority interest for one of the LLC's and is the Chief Manager of each subsidiary LLC. Respondent states that often, no brokerage was involved in the transactions. Respondent states that in absence of the broker, Respondent contracted for the purchase of the properties by the subsidiaries in Respondent's capacity as chief manager. Further Respondent states that as principal for the LLC, Respondent is responsible for the day-to-day execution of the operation of the LLC, a residential construction company. Respondent oversees the acquisitions, negotiates with the seller the purchase price and terms subject to approval of the management committee, oversees the closing of all acquisitions, oversees the selection of tenants and lease negotiations for rentals, and various duties with regard to the construction. Respondent attached a letter from the LLC's CPA to describe how Respondent is paid through the LLC. Respondent has 50% interest in the profits and losses of the company, as a member of the LLC. In addition, Respondent receives a monthly guaranteed payment for services of a fixed amount. Also, Respondent receives 5% interest in the profits and losses of the company, as a member of that LLC and receives no other compensation from that LLC.

Recommendation: Consent Order for \$2,000 for unlicensed activity in violation of T.C.A. §§ 62-13-102(4)(A), 62-13-103 and 62-13-301, said order to also include order to cease and desist all unlicensed activity.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Commissioner DiChiara made a motion to accept the recommendation of legal counsel a Consent Order for \$2,000 for unlicensed activity in violation of T.C.A. §§ 62-13-102(4)(A), 62-13-103 and 62-13-301, said order to also include order to cease and desist all unlicensed activity; Commissioner Hills seconded motion; vote of 6 yes and Commissioner Franks abstains; motion carries.

2014020091

Opened: 8/18/14

History: No history of disciplinary action.

A complaint was filed alleging that Respondent, Registered Agent for an LLC, engaged in unlicensed activity. This is one of the affiliated LLCs as referenced in previous complaint number 2014020071, and the complaint is essentially identical.

Respondent submitted a response denying that the LLC conspired to commit fraudulent or illegal acts and states the LLC is a real estate investment company which purchases and sells properties for profit, rehabilitates homes, and owns and manages rental properties. Respondent denies transacting sales under net listing arrangements. Respondent further states that it is not responsible for stating fair market values of properties to sellers of properties and that it negotiates prices which are acceptable to both buyer and seller. Respondent states that the properties purchased are below full market value because they are in a state of disrepair. Respondent states the LLC currently owns eight (8) real estate investment properties which were purchased in the past year, all in deferent stages of renovation. Respondent further states that often times, investors have agreed to purchase the properties on the contract. Respondent further denies that the LLC has never employed any person and denies having any agreements with the previous Complainant for acquisition of real estate.

Office of legal counsel performed additional research and located additional properties that Respondent's LLC bought and sold to another LLC on the same day. Respondent executed the warranty deeds as sole member of the LLC. Legal counsel requested additional information from Respondent, including how Respondent is paid by the LLC but did not receive it.

Recommendation: Consent Order for \$2,000 for unlicensed activity in violation of T.C.A. §§ 62-13-102(4)(A), 62-13-103 and 62-13-301, said order to also include order to cease and desist all unlicensed activity.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Commissioner Hills made a motion to accept the recommendation of legal counsel a Consent Order for \$2,000 for unlicensed activity in violation of T.C.A. §§ 62-13-102(4)(A), 62-13-103 and 62-13-301, said order to also include order to cease and desist all unlicensed activity; Commissioner DiChiara seconded motion; vote of 5 yes and Commissioner Franks abstains, Commissioner Alexander voted No; motion carries.

13. 2014020101
Opened: 8/18/14

First License Obtained: 7/17/90

License Expiration: 6/15/15

E&O Expiration: 1/1/17

Type of License: Broker

History: No history of disciplinary action.

Respondent is the agent for Complainant. A complaint was filed alleging that Complainant and Complainant's two living brothers signed a six month contract for the sale of their inherited property on May 1, 2014. Complainant alleges that Respondent needed to have four (4) others representing Complainant's deceased brother's estate to sign and was to provide Complainant with copies of the contract later that day, but failed to do so. Complainant states that Respondent's wife is Complainant's niece. Due to continuous harassment from Respondent's wife, Complainant offered to buy the interest of Complainant's deceased brother. Respondent rejected Complainant's offer but later suggested that Complainant increase the offer by fifty percent and informed Complainant that he would tear up his contract for \$1,500 additional paid to him. Complainant declined. After several weeks of negotiations, another niece corresponded with Complainant to let Complainant know that she would accept the original offer. At that time, Complainant contacted Respondent's office to ask Respondent to create the documents which they agreed to do and have them ready to sign on July 8, 2014. On July 6, 2014 after Complainant's bank check was on its way to Tennessee, Complainant received a text from Respondent informing Complainant that unless Complainant paid him \$1,500 or entered into a new contract for one year with an automatic auction conducted by him he would not let the ladies sign the new deed. Complainant did not respond to Respondent. Respondent sent the text to Complainant again, threatening to not allow the ladies to sign the deed. Complainant alleges Complainant ignored Respondent's threats and again asked for a copy of the contract that had been signed. Complainant alleges Respondent never received the contract. Complainant withdrew the offer, explaining that Complainant was not going to be threatened or extorted. Respondent's wife produced the document as promised the next day, and it was signed and notarized and filed at the courthouse on July 10, 2014. Respondent then sent Complainant a threatening text, threatening to file a lien on the property. Complainant states that this behavior on the part of Respondent agent is vindictive and unprofessional.

Respondent stated that Respondent was hired by the family to sell their property. Respondent's spouse is part of this family. The will called for any profits from the sale of the house to be split four ways, the 3 brothers and the deceased brother's heirs, which meant a fourth would go to 3 sisters and their mother. Respondent stated that all the family does is bicker and that Respondent stays out of it. Respondent was only helping with this transaction at the request Respondent's spouse. Respondent stated that copies of contracts were sent to all parties, and Respondent hasn't had anyone notify Respondent otherwise. Respondent stated that Respondent informed Complainant that when the heirs signed the documents, it would be considered a closing transaction and that the realty company would be due a commission of \$1,500. Respondent stated Complainant declined to pay the commission. Respondent stated Respondent told the heirs to sign the document anyway and then informed Respondent's principal broker that there would not be a commission on this transaction. Respondent stated that was the last Respondent heard about it. Respondent stated that the family is still feuding over material things and that Complainant is

trying to use whatever is necessary to make it look like Respondent has done something wrong. Respondent stated there were never any threats or coercion in any way. Respondent stated that Respondent did not threaten to put a lien on the property; rather, Respondent did make them aware that if there was a property transfer that the realty company would eventually get a commission.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Commissioner Franks made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner DiChiara; motion carries.

14. 2014020111

Opened: 8/18/14

First License Obtained: 3/26/85

License Expiration: 6/5/15

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No history of disciplinary action.

TREC opened a complaint for a potential failure to supervise above-referenced Respondent (hereinafter "affiliate broker") in previous complaint number 2014020101. Respondent stated that Respondent and Respondent's affiliate broker have had several conversations over the course of this listing about this listing and the family issues that surround it. Respondent stated this is clearly a family dispute and nothing else. Respondent stated Complainant never contacted Respondent or the office to request any information or to make any complaints about affiliate broker. Complainant never informed Respondent or Respondent's office that Complainant did not receive copies of documentation or that Complainant had any issues with affiliate broker. Respondent stated if Complainant had let Respondent know there was a problem, Respondent would have worked to correct it.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Commissioner Franks made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Collins; motion carries.

15. 2014020471

Opened: 10/22/14

First License Obtained: 2/17/12

License Expiration: 2/16/16

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No history of disciplinary action.

This complaint was opened by the staff of the Tennessee Real Estate Commission after receiving information from the Virginia Department of Records. Respondent plead guilty to a misdemeanor larceny on or about May 16, 2013 and did not disclose the conviction upon renewal of Respondent's license on February 14, 2014.

Respondent states that the misdemeanor charge was reported to a neighboring state while attempting to obtain a broker's license in that state. Respondent states that the neighboring state held a fact-finding conference regarding the charge and granted Respondent licensure in that state. Respondent is remorseful that Respondent did not disclose this information to TREC and states that Respondent did not know it was required but has since read the code and takes full responsibility for the mistake. Respondent also attached a summary of the fact-finding conference which concludes by stating it does not appear that the convictions involved the profession of real estate, and it appears that Respondent's current Tennessee employer is aware of the criminal background. In consideration of Respondent's criminal history and conduct and work activity following the incident, the Board approved Respondent's application for licensure. Character references were also included in the response.

Recommendation: Consent Order for \$2,000 for failure to report larceny conviction in violation of T.C.A. §§ 62-13-312(b)(12) and 62-13-312(f), plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Commissioner Blume made a motion to accept the recommendation of legal counsel a Consent Order for \$2,000 for failure to report larceny conviction in violation of T.C.A. §§ 62-13-312(b)(12) and 62-13-312(f), plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order; motion seconded by Commissioner Hills; motion carries.

16. 2014020631
Opened: 9/814

First License Obtained: 4/1/05

License Expiration: 3/27/16

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No history of disciplinary action.

This complaint was filed alleging that Respondent failed to disclose the location of a water meter. Respondent is the seller's agent in this matter. Complainant purchased a tract of property which was subdivided. The other tract was purchased by another couple. Complainant alleges that the properties were represented as having city water. After Complainant closed on the property, Complainant put all the utilities in Complainant's name, including the water account. Complainant stated Complainant has been paying the water bill ever since. However, it was discovered approximately 5 months later when Complainant began building a 1,700 square foot two-bedroom home that the water meter was on the other couple's property and the other couple would not agree to a water utility easement. Complainant states that as a result, Complainant was faced with the prospect of either reconstructing a water line for the cost of \$20,000 or drill for a well. The well has been obtained for Complainant's use at an expense of \$10,000. Complainant states that no provision was made by sellers or Respondent to deal with the possibility that there would be a conflict over water rights. It is Complainant's opinion that the sellers and Respondent should have fully disclosed the issue at the outset before Complainant made the offer.

Respondent denied the allegations made by Complainant and stated that in no way did Respondent purposefully mislead or fail to disclose anything to the Complainant. Respondent stated that the MLS listing states that water and electric are available which Respondent states Respondent represented to his client. Respondent stated that the seller showed Complainant on several occasions how the water lines were run off the other couple's tract and how they cut across the property onto Complainant's property and even showed Complainant's contractor. Respondent state he was never asked by Complainant about a utility easement. All parties had a copy of the plat map and necessary information. Respondent stated that Complainant had a lengthy feasibility period which had been extended a few times so Complainant could have contractors view adequate site locations for a home, septic percolation testing, and other items. During Complainant's feasibility study her attorney had noticed that the ingress/egress easement was vague so it was asked that it be recorded. The final draft of the survey and description were approved by Complainant's attorney prior to being recorded. The lack of a utility easement was never brought up by Complainant nor Complainant's agent, contractor, or attorney. The feasibility study period was from September 17, 2013 through October 29, 2013.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Commissioner Franks made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Collins; vote 5 yes, Commissioner Blume abstains, Commissioner Collins voted No; motion carries.

17. 2014020641
Opened: 9/10/14

First License Obtained: 12/3/86

License Expiration: 5/14/15

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No history of disciplinary action.

TREC opened a complaint for a potential failure to supervise above-referenced Respondent (hereinafter “affiliate broker”) in previous complaint number 2014020631. Respondent stated that the Complainant buyer was provided copies of information from the surveyor, as well as the health department. Respondent stated that her affiliate provided information from the seller in the form of a plat map and disclosure that stated water was available to the property. The seller marked the location of the water meter. The plat map provided to the buyer showed the location of the water meter by seller which was confirmed by the buyer through text messages stated that on 2 deferent times the seller drove the buyer around the property showing them the features of the property. Respondent stated that the Complainants requested and the seller paid for a survey to clear up the wording on an easement because the ingress/egress language was vague. This shows a clear indication that the seller had disclosed and was willing to make clear what the buyer was buying. Respondent stated that affiliate disclosed all information given to him by the seller, regarding the property, on MLS and to the buyer’s agent and to the buyer. Prior to receiving this complaint from the commission, Respondent stated Respondent was never made aware of any issues from Complainant or Complainant’s agent until the complaint was filed.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Commissioner Franks made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner DiChiara; motion carries.

18. 2014020671
Opened: 9/9/14

First License Obtained: 1/15/04

License Expiration: 7/9/15

E&O Expiration: 8/8/15

Type of License: Affiliate Broker

History: No history of disciplinary action.

This complaint was filed alleging inconsistent spending of HOA funds by Respondent. The complaint alleges that Respondent did not follow the laws or ethics that apply to the Tennessee Real Estate Commission. Complainant alleges that Respondent has controlled the HOA for about 7 years and has dictated how the money is spent. In November 2013, Complainant agreed to take over the treasury from another homeowner and immediately noticed inconsistencies in the bookkeeping and brought it to Respondent's attention. Such items included missing tax forms from 2010, 2011, and 2012. Respondent then informed Complainant that he wanted the treasury position to go to one of his coworkers and that he wanted Complainant replaced. Respondent informed Complainant that he and three other owners had voted to replace Complainant, which Complainant found out was untrue. Complainant is concerned about the homeowners in the community, with regard to Respondent's alleged questionable bookkeeping.

Respondent stated in his response that the HOA is a private association and unrelated to Respondent's position as a realtor. Respondent stated that this matter came about when Respondent was notified that the homeowners insurance had not been paid for the association, and the board wanted an outside, independent accountant to do the books going forward. Respondent stated that he has confirmed, despite

Complainant's allegations, that the HOA was current with their income tax filings, and 2010, 2011, and 2012 were timely filed. Respondent stated Respondent has not made any misrepresentations to Complainant or to the homeowners.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Commissioner Collins made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner DiChiara; Commissioner Alexander abstains; motion carries.

- 19. 2014020681**
Opened: 9/8/14
- First License Obtained: 10/16/91**
- License Expiration: 5/24/16**
- E&O Expiration: 8/8/15**
- Type of License: Principal Broker**
- History: No history of disciplinary action.**

TREC opened a complaint for a potential failure to supervise above-referenced Respondent (hereinafter “affiliate broker”) in previous complaint number 2014020671. Respondent stated that the subject HOA Association is a private HOA. Respondent stated it is a personal residence of Respondent’s affiliate broker and in no way related or connected with Respondent’s realty company. Respondent stated it is a personal matter that is not under her authority.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Commissioner Franks made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Hills; motion carries.

- 20. 2014020881**
Opened: 9/10/14
- First License Obtained: 5/29/12**
- License Expiration: 5/28/16**
- E&O Expiration: 1/1/17**
- Type of License: Affiliate Broker**
- History: No history of disciplinary action.**

- 21. 2014020882**
Opened: 9/10/14
- First License Obtained: 6/3/08**
- License Expiration: 6/2/16**
- E&O Expiration: 1/1/17**
- Type of License: Broker**
- History: No history of disciplinary action.**

22. 2014020883
Opened: 9/10/14

First License Obtained: 7/18/03

License Expiration: 4/2/15

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: 2014021221 Under Review

23. 2014020884
Opened: 9/10/14

First License Obtained: 4/4/14

License Expiration: 4/3/16

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No history of disciplinary action.

A complaint was filed against Respondents stating that the firm publishes information about recent sales which they did not make and states that sharing information about clients and other brokers are in poor taste. The attached advertisement was a newsletter soliciting business for homes and lot purchases and included statistical sales figures for 2013. The newsletter included a website. Copies of the website were printed on 8/20/14, and it appears that the full firm name and phone number as registered with TREC were not printed on every page of the website. Office of legal counsel reviewed the website again on 1/23/15, and it appears that the website has been edited to include the firm's full name and phone number on each page of the website.

Respondent 3 is the Principal Broker of the firm and submitted a response (in which the other Respondents signed) stating that the affiliate brokers listed in the newsletter did not have anything to do with the composition of the mailer in question, but Respondent 3 compiled and sent the newsletter. Respondent 3 states that the affiliate brokers work in the community every day, and their pictures were included for identification. Respondent 3 states that the primary allegation of the newsletter was that claimed sales figures were misrepresented, and Respondent 3 included closing statements to validate the claims. Respondent 3 reviewed the website and agreed that the full firm name and telephone number were missing from certain websites and apologizes that this information was dropped when the website was rearranged.

Recommendation: For Respondent 3, Consent Order with a civil penalty in the amount of \$1,000 for violation of Rule 1260-02-.12 highlighting (2)(b) stating that all advertisements shall be under the direct supervision of the principal broker and (4) regarding internet advertising, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order.

For Respondents 1, 2, and 4, dismiss.

DECISION: For all Respondents, the Commission voted to accept the recommendation of legal counsel.

Commissioner Franks made a motion to accept the recommendation of legal counsel for Respondent 3, Consent Order with a civil penalty in the amount of \$1,000 for violation of Rule 1260-02-.12 highlighting (2)(b) stating that all advertisements shall be under the direct supervision of the principal broker and (4) regarding internet advertising, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order. For Respondents 1, 2, and 4, dismiss; motion seconded by Commissioner Collins; motion carries.

24. 2014021221
Opened: 9/10/14

First License Obtained: 7/18/03

License Expiration: 4/2/15

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: 2014020883 Under Review

TREC opened a complaint against the Principal Broker for failure to supervise affiliates in previous complaint number 201402088. The Principal Broker was also listed as Respondent 3 in the previous complaint.

Recommendation: Dismiss as duplicative.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Chairman Griess made a motion to accept the recommendation of legal counsel to dismiss as duplicative; motion seconded by Commissioner Hills; motion carries.

25. **2014021251**
Opened: 9/22/14

First License Obtained: 3/18/02

License Expiration: 2/1/16

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No history of disciplinary action.

A complaint was filed against Respondent stating that Respondent listed a home without having all proper signatures. Respondent submitted a response stating Respondent was hired by a previous client to do a short sale on the home, and this seller was the only person named on the loan. Respondent states that the seller's significant other is the Complainant. Respondent states that Respondent was in contact with the mortgage lender who verified that the seller was the only person on the loan, but Complainant contacted Respondent insisting Complainant was on the loan. Respondent states that due to the contention between Complainant and seller, Respondent withdrew the listing and removed the lock box.

Complainant submitted additional information stating that Respondent knew that Complainant was on the deed and Complainant refused to sign over the deed if the property sold. Respondent submitted additional information stating that the seller and the mortgage lender did not inform Respondent that Complainant was on the deed. Respondent states that it was listed on July 31 and withdrawn on August 13 after Respondent obtained the Tax Record indicating Complainant was on the deed. Respondent apologizes that Complainant feels wronged and states that the listing was withdrawn immediately upon discovery.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Chairman Griess made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Franks; motion carries.

26. **20140201271**
Opened: 9/10/14
- First License Obtained: 3/9/87**
- License Expiration: 12/10/16**
- E&O Expiration: 1/1/17**
- Type of License: Principal Broker**
- History: 2014016111 Consent Order \$1,000**

TREC opened a complaint against Respondent, Principal Broker, for failure to supervise previous Respondent (hereinafter "Affiliate Broker") in previous case number 2014021251. Respondent states that the property was sold to the current seller by Affiliate Broker several years earlier but not to Complainant. Respondent states that the seller did not mention anybody else on the loan, and affiliate broker had no knowledge that anybody else was on the loan until Complainant called Affiliate Broker. Respondent states that Affiliate Broker called the seller to be sure, then withdrew the listing and removed the lock box and sign from the property. Respondent states that Affiliate Broker's actions were appropriate.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Chairman Griess made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Hills; motion carries.

27. **2014021301**
Opened: 10/2/14
- First License Obtained: 9/28/94**
- License Expiration: 6/18/15**
- E&O Expiration: Uninsured**
- Type of License: Time Share Registration**
- History: No history of disciplinary action.**

A complaint was filed stating that Complainant owns a timeshare which is paid in full, but the maintenance fees have accumulated for the last few years and have continued to increase, which Complainant cannot pay due to fixed income and health issues. Complainant further states Respondent stated Complainant must purchase more points to obtain the week Complainant wanted to schedule for vacation and to reduce maintenance fees. Complainant states that Respondent has not followed through on these promises. Complainant states that Complainant attempted to cancel one of the purchases within the three (3) day timeframe, but Complainant still received a bill and Respondent has no record of the phone call.

Respondent regrets to hear of Complainant's concerns and apologizes for the inconvenience. Respondent states that Complainant's contracts were severely delinquent and cancelled due to an assessment foreclosure sale. Respondent states that because of Complainant's long time loyalty, Respondent agreed to offer Complainant a deed in lieu of assessment foreclosure for their property and Complainant agreed to accept Respondent's resolution. Respondent further states that their documentation and records do not substantiate Complainant's allegations.

It appears to office of the legal counsel, based on documentation provided by Respondent, that cancellation of a contract must be in writing.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Commissioner Collins made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Franks; motion carries.

28. 2014021571

Opened: 9/22/14

First License Obtained: 8/30/04

License Expiration: 6/19/16

E&O Expiration: 1/1/17

Type of License: Affiliate broker

History: No history of disciplinary action.

A complaint was filed by an agent who worked a transaction with Respondent. Complainant represented the sellers and Respondent represented the buyers. Complainant alleges that a binding agreement was entered on May 31 for a 50% cash transaction and requiring an earnest money check. Complainant requested the check, proof of funds, and a lender's authorization to no avail. Complainant states that their principal brokers were in touch and alleges that Respondent's principal broker was not aware of the transaction and had no documents in the office but would contact Respondent. Complainant also alleges that Respondent's principal broker stated that Respondent does not live in the same city. Complainant alleges that Complainant got in touch with Respondent on June 13, 2014 who indicated that Respondent was unable to work due to a back injury and would obtain the earnest money check and documentation that day. Complainant states that the buyer decided not to have a formal home inspection but requested a termite inspection, and Complainant advised that a termite inspection was outside the contract date but assisted in setting one up for June 16 anyway. Complainant states that the termite inspection was cancelled on June 16 because the check and documentation were not received. Complainant states that the earnest money check was received on June 18 as well as bank statements which appeared to indicate funds were available, but no lender's letter was provided. Complainant states that Respondent indicated buyer decided to do an all cash transaction, but on June 20 there was only proof that half the funds were deposited for closing. Complainant states that Respondent was not responsive to the title company but finally provided an addendum to the contract on July 1 but did not provide the additional funds needed for closing by the closing date of July 10. Complainant states that a closing date/possession date amendment to extend for one week was received on July 11 without any explanation why the funds were not received.

Complainant alleges that the principal broker knew the closing would not occur on the scheduled date because a lender was not obtained, but this was not communicated to Complainant. Complainant further alleges that Complainant's Principal Broker called the buyer directly to assist in finding a lender, but the Buyer did not provide the lender the documentation needed, and Complainant received a request to release the earnest money on August 9. Complainant states that the form was filled out incorrectly by Respondent.

Respondent admits to not responding to Complainant on two (2) deferent occasions due to health issues on the first occasion and a broken phone on the second occasion. Respondent states that the contract files are kept on a dropbox, which an administrative assistant has access to. Respondent admits that the earnest money was not received in compliance with the contract stating the check was at an old building. Respondent states that the buyer had 50% cash for the transaction and was able to obtain funds from a property owned in another state. Respondent states that buyer did not have the home inspection because the seller was not willing to do any repairs with the accepted sales price. Respondent denies being unavailable on June 10, the original closing date, stating that Respondent was on the way to closing when Respondent was notified by the buyer that the funds were not there yet. Respondent states that Respondent spent the rest of the day helping the buyer since the buyer had already brought the U-haul and belongings to Tennessee for the move. Respondent states that Complainant's principal broker requested to speak with the buyer to offer finance solutions, but buyer was not comfortable with using the lender and began looking for another home. Respondent states that Complainant's principal broker was notified immediately, and the extension was not signed by seller. Respondent states that this was a hard outcome for everybody involved, and the buyer has had medical problems and is back in the other state receiving treatment. Respondent further states that Respondent's ailing father lives in the city where Respondent's firm is, which is why Respondent is working in that area. Respondent denies being dishonest or unethical and apologizes for the earnest money situation. Respondent states that all parties lost out, and the buyer agreed to settle with the sellers for \$7,500 for not closing.

The office of legal counsel reviewed the documentation provided and conducted additional research. It appears that the city that affiliate broker lives in is within 35 miles of the real estate firm. The Purchase and Sale Agreement was accepted with Counter Offer # 2 for a purchase price of \$210,000, with a financial contingency of obtaining a loan up to 50% of the purchase price, and a \$1,000 Earnest Money requirement to be deposited at Respondent's firm. The binding agreement date was May 31 for a closing on July 10. An Addendum 1 was executed on May 31 for the sale of the home to be "As Is." An Addendum "F" was executed by seller on July 3 stating "This offer is going from finance to cash deal." An Amendment "C" closing date/possession date was executed by buyer to extend closing date to July 18. It appears that the earnest money check is dated June 1 with a deposit receipt for June 19. Bank statements showing funds equal to approximately half of the purchase price were printed on June 9. The earnest money disbursement and mutual release states that the binding agreement was May 30 with the statement that the money is being disbursed per agreement between seller and buyer and was executed August 9. It appears that Complainant amended the earnest money disbursement form to the binding agreement date of May 31 and to state that it should be returned to buyer. An email from buyer to Respondent was included in the transaction documents stating that the money was wired from two deferent accounts at two deferent banks, but one of the bankers made a mistake, and seller requested an additional seven (7) days to close.

Recommendation: Consent Order with a civil penalty in the amount of \$1,000 for violation of T.C.A. § 62-13-403(1) and § 62-13-312(b)(14) and Rule 1260-02-.09 highlighting subsection (2) stating that an affiliate broker shall pay over to the broker... all...earnest money immediately upon receipt and (9) stating that earnest money shall be deposited into an escrow or trustee account promptly upon acceptance of the offer, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order.

DECISION: The Commission voted to defer the matter for Commissioner Blume's review.

Chairman Griess made a motion to accept counsel's recommendation Consent Order with a civil penalty in the amount of \$1,000 for violation of T.C.A. § 62-13-403(1) and § 62-13-312(b)(14) and Rule 1260-02-.09 highlighting subsection (2) stating that an affiliate broker shall pay over to the broker... all...earnest money immediately upon receipt and (9) stating that earnest money shall be deposited into an escrow or trustee account promptly upon acceptance of the offer, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order; motion seconded by Commissioner Franks. Substitute motion made by Commissioner Alexander to defer till Commissioner Blume reviews case; motion seconded by Chairman Griess; motion carries.

29. 2014021591

Opened: 9/26/14

First License Obtained: 4/8/87

License Expiration: 12/22/16

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No history of disciplinary action.

TREC opened a complaint against Respondent, Principal Broker, for failure to supervise previous Respondent (hereinafter "Affiliate Broker") in previous case number 2014021571. Respondent apologizes for the incident stating that no complaints have been filed against Respondent or the firm and apologizes to the previous Complainant's principal broker for the way business was conducted. Respondent states that Respondent had many conversations with the affiliate broker during the transaction, and Respondent understands Complainant's concerns regarding communicating with the affiliate broker. Respondent states that both Respondent and affiliate broker failed in their duties as professionals. Respondent states that very strict guidelines regarding the process of closings have been effectuated in Respondent's firm since this transaction. Respondent apologizes and requests that the Commission consider that this is the first complaint since Respondent's licensure in making a determination. Respondent has used this incident as a learning tool.

Recommendation: Consent Order with a civil penalty in the amount of \$1,000 for violation of T.C.A. § 62-13-312(b)(15) and § 62-13-312(b)(14) and Rule 1260-02-.09 highlighting subsection (3) stating brokers are responsible at all times for...earnest money accepted by them or their affiliate brokers, in accordance with the terms of the contract, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order.

DECISION: The Commission voted to defer the matter for Commissioner Blume's review.

Commissioner Hills made a motion to include this case for Commissioner Blume to review for discussion at March 4, 2015 meeting; motion seconded by Chairman Griess; motion carries.

30. 2014021601

Opened: 9/23/14

First License Obtained: 8/9/11

License Expiration: 8/8/15

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No history of disciplinary action.

A complaint was filed stating that Respondent sends solicitations suggesting that Respondent has one's own firm. Complainant alleges that Respondent has a personal website that states the firm name is "[Respondent's Last Name] Real Estate," and the website does not list Respondent's firm name or phone number. Complainant further states that the "About Us" section lists Respondent as Owner and Realtor. Complainant also states that Respondent sends letters for solicitation, and the "[Respondent's Last Name] Real Estate" is more prominent than Respondent's firm name. Complainant further states that the envelope only includes Respondent's name in the return address and not Respondent's firm name. Complainant submitted additional information requesting to withdraw the complaint.

Respondent submitted a response denying the allegations stating that every marketing piece sent includes Respondent's firm name. Respondent states that the personal website includes the firm name and phone number on every page. Respondent admits that the "About Us" page states that Respondent is the Owner and Realtor because Respondent is the lead agent of Respondent's team, but that does not suggest Respondent is the owner of the firm. Respondent states that the letters sent includes Respondent's team logo on the header along with Respondent's firm logo. Respondent points out that Respondent's firm name is in Respondent's signature line. Respondent states that the postcard included in the complaint is an old postcard, and the new one reflects a larger logo, but each postcard includes Respondent's firm name. A business card included in the complaint is also an older one, but each business card includes Respondent's firm name. Respondent states all marketing materials acknowledge the brokerage, and Respondent states that Respondent has attended all meetings by Respondent's brokerage to discuss the proposed rule changes, so Respondent can properly promote Respondent's business.

Complainant submitted additional information stating that it is Complainant's belief that the "About Us" page leads others to believe that Respondent is the owner of the firm. Complainant also states that Complainant did not intend to give the Commission outdated materials and points out that Respondent never mentioned when the materials had been updated.

Office of legal counsel reviewed the documentation. The letters include "[Respondent's Last Name] Real Estate" in the center letterhead and Respondent's firm name to the left of that in smaller font. The signature line includes Respondent's name, Respondent's firm name and Respondent's website, along with the firm contact information in the footer. The return address on the envelope states Respondent's last name and an address. A postcard and business card each include Respondent's name, contact phone numbers, website, email address and the "[Respondent's Last Name] Real Estate" logo, then states "Each [Firm Name] office is independently owned and operated." Copies of each page of Respondent's website printed on August 26, 2014 include Respondent's firm name in the footer and the phone number on the navigation menu. Office of legal counsel viewed the website again on January 27, and it appears that it was rearranged so Respondent's firm name and phone number is now in the header above the "[Respondent's Last Name] Real Estate" logo.

Recommendation: Dismiss.

DECISION: Consent Order with a civil penalty in the amount of \$1,000 for violations of T.C.A. § 62-13-312(b)(14) and Rule 1260-02-.12(2)(e), plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order.

Chairman Griess made a motion of a Consent Order with a civil penalty in the amount of \$1,000 for violations of T.C.A. § 62-13-312(b)(14) and Rule 1260-02-.12(2)(e), plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order; motion seconded by Commissioner Hills; motion carries.

31. **2014021611**
Opened: 9/25/14

First License Obtained: 3/6/14

License Expiration: 4/21/16

E&O Expiration: 1/1/17

Type of License: Broker

History: 201402356 Open, 201402359 Open

TREC opened a complaint against Respondent, who was Respondent's Principal Broker at the time of the complaint, for failure to supervise previous Respondent (hereinafter "Affiliate Broker") in previous case number 2014021601. Respondent states that Affiliate Broker's advertising clearly identifies the firm. Respondent's firm strives to train their agents in the correct procedures with regarding to TREC rules and potential rule changes. Respondent states that Respondent's firm reviews advertising by agents on a regular schedule and teaches bi-weekly at sales meetings. Respondent further outlines the specific information as addressed by Affiliate Broker in the previous complaint. Respondent states that these issues are compliant under the current laws and rules, and Respondent constantly reviews the firm's practices and counsel's agents on a regular basis.

Recommendation: Dismiss.

DECISION: Consent Order in the amount of \$2,000 for violations of T.C.A. § 62-13-312(b)(14), (15) and Rule 1260-02-.12(2)(b), plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order.

Commissioner Alexander made a motion of Consent Order in the amount of \$2,000 for violations of T.C.A. § 62-13-312(b)(14), (15) and Rule 1260-02-.12(2)(b), plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondents' execution of Consent Order; motion seconded by Commissioner Franks; motion carries 5 yes and Chairman Griess and Commissioner Collins vote no.

32. 2014021721

Opened: 10/22/14

First License Obtained: 7/8/13

License Expiration: 1/13/15

E&O Expiration: Uninsured

Type of License: Affiliate Broker

History: No history of disciplinary action.

***This affiliate is in suspended status and was broker released 11/4/14.**

This complaint was filed stating Complainant sent out an email looking for an agent in the Nashville area to show Complainant around, as Complainant was relocating from out of state. Complainant states that Respondent showed Complainant around for approximately a day and a half and then Complainant was blind-sided with the fact that Complainant owed Respondent and Respondent's company a fee of \$179. Complainant stated that Complainant paid the fee but then protested it and hasn't received a refund. Respondent did not respond to the complaint.

Recommendation: Consent Order with a civil penalty in the amount of \$500 for violations of T.C.A. § 62-13-312(b)(14) and 62-13-313(2) for failure to respond, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Commissioner Hills made a motion to accept counsels recommendation of Consent Order with a civil penalty in the amount of \$500 for violations of T.C.A. § 62-13-312(b)(14) and 62-13-313(2) for failure to respond, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order; motion seconded by Commissioner Collins; motion carries.

33. 2014021771
Opened: 10/7/14

First License Obtained: 2/11/93

License Expiration: 12/15/16

E&O Expiration: 1/1/17

Type of License: Principal broker

History: No history of disciplinary action.

TREC opened a complaint for a potential failure to supervise above-referenced Respondent (hereinafter “affiliate broker”) in previous complaint number 2014021721. Respondent stated that the retainer fee agreement is a form that the realty company has implemented to allow agents to collect a fee up front as they begin to work with sellers and buyers that covers their efforts, should a buyer or seller choose to rent or not proceed to closing. Respondent stated that this is disclosed up front. Respondent included both the Buyer Representation Agreement and the retainer fee agreement in Respondent’s response. Respondent stated that she became aware of Complainant’s frustration through the affiliate and immediately spoke with Complainant and assured Complainant that the money would be returned and that Complainant would be released from the buyer representation agreement. Respondent stated that there is a misunderstanding between Respondent affiliate and Complainant, as affiliate is very professional, organized, and detail-oriented. Respondent stated that when the situation was brought to Respondent’s attention, Respondent immediately sought a resolution to release Complainant from her agreement and send the un-cashed check back. Respondent state the check was sent registered mail to insure that it arrived and was received. The file showed that Complainant signed both the Buyer Representation Agreement and the retainer fee agreement on July 20, 2014.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Chairman Griess made a motion to accept counsel recommendation to dismiss; motion seconded by Commissioner Collins; motion carries.

34. 2014021791
Opened: 11/4/14
First License Obtained: 7/27/07
License Expiration: 7/26/15
E&O Expiration: 6/19/15
Type of License: Time Share Registration
History: No history of disciplinary action.

35. 2014021801
Opened: 10/23/14
First License Obtained: 5/2/13
License Expiration: 5/1/15
E&O Expiration: Uninsured
Type of License: Time Share Salesperson
History: No history of disciplinary action.
***License Suspended**

36. 2014021821
Opened: 10/9/14
First License Obtained: 2/14/02
License Expiration: 7/6/16
E&O Expiration: 6/19/15
Type of License: Principal broker
History: No history of disciplinary action.

Complainants attended a presentation that Respondent 2 (affiliate broker) gave, and state they were offered a twelve (12) week vacation package for \$15,000 which would cost no more than \$169/month. Complainants state they were told they could use a credit card to earn points to pay toward membership fees. Complainants state they were told that they could sell their additional weeks if they wanted them. Complainants state they signed the documents and did not receive any financial papers but a huge notebook with information about the timeshare. Complainants state they were offered ninety (90) day training on how to schedule their weeks but allege they were not contacted to schedule this training. Complainants state their credit card bill was \$300 and their owner's statement was \$597, though they were told they would have enough points to cover the first owner's statement. Complainants request to be released from this debt.

Respondents did not respond to this complaint. The certified letters were returned "attempted not known," with no forwarding address. The complaint was subsequently emailed to Respondent principal broker who stated Respondent's attorney would forward a response.

Recommendation: Dismiss.

DECISION: For Respondent 1, dismiss.

For Respondent 2, Consent Order with a civil penalty in the amount of \$1,000 for violations of T.C.A. § 62-13-312(b)(14) and 62-13-313(2) for failure to respond, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

For Respondent 3, Consent Order with a civil penalty in the amount of \$1,000 for violations of T.C.A. § 62-13-312(b)(14) and 62-13-313(2) for failure to respond, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order.

Commissioner Hills made a motion for Respondent 1 to accept counsel's recommendation to dismiss. For Respondent 2, Consent Order with a civil penalty in the amount of \$1,000 for violations of T.C.A. § 62-13-312(b)(14) and 62-13-313(2) for failure to respond, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order. For Respondent 3, Consent Order with a civil penalty in the amount of \$1,000 for violations of T.C.A. § 62-13-312(b)(14) and 62-13-313(2) for failure to respond, plus attendance at one (1) entire regularly scheduled meeting of the Commission within one hundred eighty (180) days of Respondent's execution of Consent Order. Motion seconded by Commissioner Franks; vote 6 yes and Chairman Griess is out of the room, motion carries.

37. **2014021871**
Opened: 10/3/14

First License Obtained: 10/15/68

License Expiration: 6/14/15

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No history of disciplinary action.

This complaint was filed alleging that Complainant purchased a home to fix up and flip, but that when Complainant completed the home to sell, Complainant could not sell it because of a highway that was going to be constructed, taking up part of the property. Complainant alleges that Respondent should have known and disclosed such to Complainant, as this highway project had been in the works for years.

Respondent stated that Respondent was unaware of a road widening project by the Tennessee Department of Transportation until he received a letter from the Complainant dated June 30, 2014. Respondent stated that he was engaged by a regional bank on February 14, 2014 to do a market value appraisal of the subject property for the purpose of mortgage financing for the purchase of the subject property by the Complainant. Respondent stated Respondent made a physical interior and exterior inspection of the property on February 20, 2014, and there were no survey markers, spray painted lines in the yard, no signs posted, no kind of physical activity that road work was going to be done, much less a road widening project. There was no mention of a road widening in the listing, and Respondent was not responsible for finding the property for Complainant. Complainants listed the property with the same listing agent that sold them the property on April 25, 2014, and there was no mention of a widening project in the listing. It was only after TDOT sent out letters to property owners that would be affected by the project, in the late spring of 2014, did anyone apparently, know of the project. The Complainant provided Respondent with a project information sheet that TDOT gave them on June 13, 2014; in the letter they sent Respondent that a public hearing on the widening project was going to be held December 11, 2001, which was 13 years ago. Respondent apologizes that he did not attend that meeting at the time or remember anything about this project being discussed around town or in the media. Respondent stated that Complainant appears under the impression that this was just common and public knowledge; however, Complainant did not know when they were looking for property, and Respondent stated Respondent did not know when the appraisal was done. Respondent also stated that two real estate agencies did not know when they had it listed.

Complainant sent a rebuttal to the response stating that if Respondent was practicing good business, he should have looked for information and become familiar with his surroundings in the local newspapers.

Respondent then sent a second response stating that he did research local articles for information on the widening and found nothing in the local newspapers or with TDOT.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Commissioner Collins made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Franks; motion carries.

38. 2014021901

Opened: 10/22/14

First License Obtained: 5/3/13

License Expiration: 5/2/15

E&O Expiration: 12/9/14

Type of License: Time Share Salesperson

History: No history of disciplinary action.

This complaint was filed alleging that Respondent lied to Complainant, and that Complainant relied on this in purchasing the property. Complainant stated that while touring the timeshare property, Respondent informed them that they must buy today, as Tennessee law states that you cannot buy after the day of the tour. Complainant was offered a \$40,000 repo unit at a discounted price of \$25,000, which Complainant was permitted to purchase that day only. Complainant stated that this meant that they had to make a very big decision about spending multiple thousands of dollars within the time or presentation and the offer would no longer be available if they left to think on it. Included with the deed for the unit was twelve bonus weeks which were purchased by the initial owner of the repossessed property. Complainant stated they were given a quick rundown of transfer/user fees when using the bonus weeks, which were misleading and confusing as per the contract Complainant would later sign. Complainant was hesitant to finance with Respondent's company because of the high interest rate but was told that they could refinance later. Complainant was made to believe that life insurance available with the loan was mandatory; however, when signing the contract it was found to be optional. Complainant stated nothing was as it was presented to be. The twelve bonus weeks do not transfer as easily as Complainant was told. After purchase, Complainant attempted to refinance the loan at several banks and finance companies, only to find out that no lending institution will refinance a timeshare because they are not a sound enough investment for them to loan money. Complainant states that when selling real estate, an agent is not supposed to deceive or lie in order to sway the potential client which results in upping the odds of making a sale.

Respondent's attorney sent a response to the complaint stating that Respondent does not offer same day price incentives that are only available to consumers the day they attend the sales presentation. Respondent denies that any misrepresentations were made with regard to the matter. Respondent stated that it makes no representations as to the likelihood of refinancing since that is a decision which is entirely up to the banks and financial institutions and is based upon individualized credit criteria. Third, Respondent stated it is not legally obligated to verbally disclose the statutory rescission period under Florida law. The cancellation policy is disclosed conspicuously on the face of the Contract for Purchase and Sale as required by law and is stated right above owners' signatures on the Contract in bold capital letters. Respondent denies that any misrepresentations were made with regard to the statutory rescission period.

On November 25, 2014, this office received written correspondence from the attorney for Complainant stating that Complainant wanted to retract the complaint filed with the division and that both complaints should be dismissed.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Commissioner Collins made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Franks; motion carries.

**39. 2014021911
Opened: 10/9/14**

First License Obtained: 3/6/00

License Expiration: 8/14/16

E&O Expiration: 1/1/17

Type of License: Principal broker

History: 201402391 Open

TREC opened a complaint for a potential failure to supervise above-referenced Respondent (hereinafter "affiliate broker") in previous complaint number 2014021901. Respondent's response was sent by an attorney incorporated in the response to the previous complaint.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Chairman Griess made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Hills; motion carries.

**40. 2014022741
Opened: 9/29/14**

First License Obtained: 10/31/12

License Expiration: 12/31/14

Type of License: Designated Agent for Vacation Lodging Service

History: No history of disciplinary action.

***License is Delinquent**

Respondent is the Designated Agent for a Vacation Lodging Service. Complainant spent a week at one of Respondent's cabin alleging that it was filthy with no apparent sweeping of the living room, that dead bug carcasses were found throughout the cabin, bugs were coming up the drains, the deck was dry rotted, and the bed sheets were dirty and stained. Complainant spoke with one of the representatives who stated that Respondent is trying to work with the owners to make improvements, but there was no offer to inspect the cabin or send somebody to clean it. Complainant states that a maintenance man did come by when they were out and removed the rotted boards. Complainant states that they were unable to obtain other accommodations because of the no refund policy. Complainant states that upon checkout, Respondent realized that nobody checked the cabin to ensure it was safe and clean before Complainant's stay. Complainant states that in follow-up conversations, the representative refunded an amount equal to one night from the cabin owners. Complainant alleges that the VLS company did not take any responsibility for the conditions of the cabin and instead placed the blame on the owners.

Respondent states that in fifteen years of owning the VLS, there has been no complaints to this magnitude, but Respondent knows not everybody can be pleased. Respondent states that when Complainant told Respondent's representative of the problems, it was determined that their inspector had been out sick, and nobody performed an inspection before Complainant's arrival. Respondent accepted full responsibility for the error and apologized. Respondent states that Complainant refused a housekeeper to be sent to the cabin. Respondent further states that all units are sprayed monthly for pest control, but ladybugs accumulate near high windows. Respondent states that the four boards from the deck were replaced immediately by the owners' contractor, and Respondent states that the issue was purely cosmetic and attached a letter from the contractor to that effect. Respondent further states that Complainant was charged two nights' rental for deposit, the seventh night was free, and Complainant's received an additional night free for their trouble. Respondent further states that Complainant never requested a refund, partial refund, or to move to another chalet. Respondent states Respondent would have gladly honored a request for Complainant to seek other accommodations if asked.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Commissioner Franks made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Collins; vote 6 yes and Commissioner Alexander abstains; motion carries.

41. 2014022781
Opened: 10/9/14

First License Obtained: 8/12/04

License Expiration: 9/9/15

E&O Expiration: 1/1/17

Type of License: Affiliate Broker

History: No history of disciplinary action.

This complaint was filed against Respondent (Seller's Agent) by buyers. A Purchase and Sale Agreement was entered into on July 19, 2014 for closing to occur on August 29, 2014. Complainant alleges misconduct on the part of Respondent stating that Respondent listed the home in a misleading and false manner, stating there were double driveways. Complainant further states that the loan was denied because Complainant accepted a job transfer out of state. Complainant states that Complainant's agent did not forward the loan denial to Respondent, which benefitted the sellers. Complainant alleges that Respondent received confidential, personal information regarding the work transfer and loan denial. Complainant alleges that Respondent demanded that Complainant proceed with the closing knowing that Complainant was no longer qualified for the home mortgage.

Respondent states that Respondent never received any form of a written notice of loan denial or job transfer from the Complainant, despite multiple attempts to acquire it from Complainant's attorney. Respondent stated that the sellers signed the earnest money release and termination of contract sent by the Complainant's attorney on August 25, 2014, prior to receiving the loan denial letter on August 26, 2014. Respondent stated that Respondent never had any contact with the Complainant in any way. Respondent does not see how Complainant can claim that Respondent was trying to bully them into closing on the home. Respondent stated that Respondent represented sellers to the best of Respondent's ability.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Chairman Griess made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Franks; Commissioner Collins abstains; motion carries.

42. 2014022891
Opened: 10/9/14

First License Obtained: 1/21/97

License Expiration: 3/31/15

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No history of disciplinary action.

TREC opened a complaint for a potential failure to supervise above-referenced Respondent (hereinafter “affiliate broker”) in previous complaint number 2014022781. Respondent states that affiliate broker is co-owner of the office. Respondent stated that once Respondent received the letter from Complainant’s attorney and the Termination of Contract and Mutual Release Agreement, Respondent had conversations with the attorney on the matter. Respondent stated Respondent never had conversations with Complainants, themselves. Respondent stated that Respondent never tried to force the Complainant to close on the home but only requested written confirmation because sellers had already entered into a purchase agreement for another home. Respondent states that Affiliate Broker represented the clients to the best of Respondent’s ability.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Chairman Griess made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Franks; Commissioner Collins abstains; motion carries.

43. 2014022901
Opened: 10/8/14

First License Obtained: 6/1/11

License Expiration: 5/31/15

E&O Expiration: 1/1/17

Type of License: Affiliate broker

History: No history of disciplinary action.

This complaint was filed against buyer's agent regarding the previous transaction referenced in case number 2014022781. This complaint alleged that Respondent (Complainant's agent) provided confidential information and was not working in the best interest of the client. Complainant states that Respondent obtained this confidential information through Respondent's part-time employer, through which Complainant is also employed. Complainant alleges that sellers refused to make any repairs to the home because Respondent had knowledge of the transfer and reported it to seller's agent. Complainants further allege that Respondent worked with sellers attorney to force them to close, which is not working in the best interests of Complainant.

Respondent acknowledged that Respondent and Complainant were employed by the same company but denies having any knowledge of the confidential information. Respondent stated that Complainant told Respondent on August 13, 2014 that Complainant had accepted the transfer and that Complainant would not be buying the house. Respondent stated Respondent had to have some documentation to justify cancelling the contract. Respondent stated that Respondent never informed the sellers about the transfer; rather, Complainant's attorney sent Respondent and the sellers a letter. Respondent states that Complainant hired an attorney and terminated Respondent's representation. Respondent apologizes for the misunderstanding.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Chairman Griess made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Franks; Commissioner Collins abstains; motion carries.

44. 2014022941
Opened: 10/9/14

First License Obtained: 6/12/03

License Expiration: 1/9/17

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No history of disciplinary action.

TREC opened a complaint for a potential failure to supervise above-referenced Respondent (hereinafter “affiliate broker”) in previous complaint number 2014022901. Respondent stated that Respondent’s “Standard Practice of Procedure” with regard to supervision of agents assigned to this firm is to have daily contact with each of them to discuss matters relating to listings and/or sales contracts that are either about to occur or which have already begun a process to closing. On or about August 19, 2014 Respondent stated Respondent was apprised by affiliate broker that the contract with Complainant might be in jeopardy of not closing. The following Monday, August 25, 2014, the release of earnest money form was signed by all parties and the contract was terminated.

Included in the file is a letter to Respondent from Complainant dated September 2, 2014, stating the Complainant makes no claims that Respondent or Respondent’s company instructed affiliate broker to act in such a manner. Respondent states that this letter serves to absolve Respondent of any wrongdoing in Complainant’s mind in this matter.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Commissioner Franks made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Chairman Griess; Commissioner Collins abstains; motion carries.

45. 2014022971
Opened: 10/1/14

First License Obtained: 2/15/08

License Expiration: 2/14/16

E&O Expiration: 1/1/17

Type of License: Principal Broker

History: No history of disciplinary action.

This complaint was filed alleging that Complainant noticed a site on the internet for preppers that Respondent had listed for sale in a prepper community. Complainant indicated that Complainant contacted Respondent (listing agent for the subject property) in reference to this and was assured that the community was all preppers. Complainant indicated that Complainant is not a prepper but would like the solitude of a vacation home without others around. Complainant indicated that Respondent lied, in that this community was not a prepper community at all. Complainant alleged that Complainant moved in December 2013 and noticed there was no dining room table, nor chairs left in the home. Complainant stated Complainant bought the furniture that remained in the home for \$3,500 but Complainant did not have an inventory and was not sure of what was actually in there. Complainant stated Complainant only saw it once along with several other properties 6 months prior. Complainant alleged that Complainant went to Respondent's house for Christmas dinner and made the comment that the kitchen table and chairs looked familiar in Respondent's home, and Respondent indicated that they should because they came from Complainant's house. Complainant also alleged that Respondent admitted to taking Complainant's firewood without permission. Complainant also alleged that Respondent also informed them that it never snows on the mountain where the home is located, and within a few days of arriving, it snowed twice. Complainant alleged Respondent will say and do anything to sell property. Complainant alleged that neighbors informed Complainant that Respondent has keys to everyone's homes, and Respondent uses them freely. Complainant also alleged that Respondent removes other realtor's signs from properties and has done so in Complainant's presence. Complainant alleges that Respondent has hired a man to threaten Complainant.

Respondent denies the allegations made by Complainant, stating that Respondent has been in the real estate business for 27 years and has never had a complaint filed. Respondent states that the complaint seems to be about Respondent's character and not the transaction, itself. Respondent stated that Respondent offered to show Complainant homes listed by other agents and other companies, as well, and did not monopolize the transaction in any way. Respondent stated that with regard to the kitchen table and chairs, the former owner of the home offered them to Respondent, and they were moved out of the home prior to Complainant arriving at the home. Respondent indicates that Respondent has a notarized statement proving they were given to Respondent. Respondent stated that Complainant offered the firewood to any of his neighbors who wanted it because he would not be returning until early spring. Respondent stated that after being informed by Complainant that Respondent was not entitled to the wood, Respondent returned it immediately. Respondent stated from that point on, Complainant turned against her and began make derogatory remarks about Respondent to neighbors, as well as on the internet, including spreading rumors that Respondent hired someone to threaten Complainant. Respondent stated that Complainant does not seem to be unhappy with the purchase of the property; rather just has negative accusations about Respondent's character.

Respondent claims Respondent holds many keys for properties there, for reasons of showing for sale properties, friends or service people requiring access, alarm codes, or simply to check on the owners' property for them if requested while they are away. Respondent sent many letters from property owners, as well as community leaders on behalf of Respondent's character, along with the complaint.

Office of legal counsel reviewed the transaction file, and it appears that Respondent was the listing agent for the subject property and acted as transaction broker or facilitator. According to the Purchase and Sale Agreement, the items that were to remain included the washer dryer, stove, dishwasher, microwave and refrigerator. There is a handwritten bill of sale in the file that states Complainant purchased from seller the following: sofa, love seat, end tables, lamps, shelves/books, 2 beds, dressers, flat screen television, patio table and chairs, miscellaneous bathroom supplies, towels, and full kitchen: dishes, utensils, pans, etc. There is no mention of dining room table and chairs.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel.

Commissioner Franks made a motion to accept the recommendation of legal counsel to dismiss; motion seconded by Commissioner Hills; vote 5 yes, Commissioner Alexander and Commissioner Collins abstains; motion carries.

CONSENT ORDER TRACKING

Ms. Baird asked if the Commissioners had any questions about the consent order log. The Commissioners did not have any questions.

EXECUTIVE DIRECTOR'S REPORT, EVE MAXWELL

Ms. Maxwell presented the following information to the Commission for review via the I-Pads:

COMPLAINT STATISTICS REPORT

Ms. Maxwell presented complaint statistics to the Commission. As of January 31, 2015, TREC had a total of 205 open complaints. There have been 232 closed this fiscal year starting 7-1-14 to present and 148 closed with no action, 11 were closed with a letter of warning, 72 with a Consent Order and 1 revocations.

Monies Collected 1/1/15 – 1/31/15

Consent Orders Fees \$4,500.00; Reinstatement Fees \$26,930.00, Agreed Citations 600.00, Total \$32,030.00.

COMPLAINTS PRESENTED INVOLVING PROPERTY MANAGEMENT ISSUES

July, 2014 – January 31, 2015 total complaints presented to Commission 269.

July, 2014 – January 31, 2015 complaints presented to Commission involving Property Management 31 which is equal to 11.5% of complaints during this time involved Property Management.

LICENSING STATISTICS

Ms. Maxwell presented licensing statistics for the month of January 2015. The statistics presented included tables which compared several years' number of licensees, firms, exams taken, applications approved and renewal percentages. As of January 31, 2015, there were 23,958 active licensees, 1,122 inactive licensees, retired licensees 7,321, broker release 316, and 1,265 suspended. There were 353 exams administered in month of January 2015. The total of exams taken year to date is 353. There were 222 approved applications in January 2015. Year to date total of approved applications 222. The number of licensees in retired and inactive status was 8,443. TREC total number of individual; licensees in active, inactive, retired, and broker release is 33,982. There were 3,835 active firms and 176 retired firms. Grand total of firms and retired firms 4,011.

BUDGET

Ms. Maxwell had previously sent a copy of the budget to the Commissioners for their review. Deputy Commissioner Bill Giannini introduced new Assistant Commissioner Brian McCormack before they discussed last fiscal year end budget and answered any questions.

E&O UPDATE/QUARTERLY CLAIMS REPORT

Ms. Maxwell stated on 1/13/2015, a total of 2,822 licensees were suspended for failure to provide proof of E&O coverage. Of that total, 25 were already in suspension for another matter, 312 were in a Broker Release status (broker released at time E&O renewals were due), 7 were in a problem status and 2,474 were in an active status. Pursuant to TCA 62-13-112, letters were sent to the licensee at their last known business address and home address as registered with the Commission and to the licensee's principal broker at the principal broker's address as registered with the Commission.

As of 2/2/2015, there were 1,121 licensees who remain suspended for E&O. The table below shows the breakdown of those remaining in suspension. Licensees who show proof of E&O coverage within 30 days of suspension shall be reinstated without the payment of any fee. Starting with 31st day of suspension, the licensee must pay a penalty fee and show proof of E&O in order to be reinstated. I have included Rule 1260-01-.16

Lapsed Errors and Omissions Insurance (Effective 5/8/2014)

(1) Licensees Who Fail to Maintain Errors & Omissions (E&O) Insurance

(a) Penalty fees for Reinstatement of a Suspended License: Any licensee whose license is suspended

for more than thirty (30) days pursuant to T.C.A. § 62-13-112 for failure to maintain E&O insurance must provide proof of insurance that complies with the required terms and conditions of coverage to the Commission and must pay the following applicable penalty fee in order to reinstate the license:

1. For a license suspended due to a lapse in E&O coverage for more than thirty (30) days but within one hundred twenty (120) days: (i) Two Hundred Dollars (\$200.00) if the licensee's insurance carrier back-dated the licensee's E&O insurance policy to indicate continuous coverage; or (ii) Four Hundred Dollars (\$400.00) if the licensee's insurance carrier did not back-date the licensee's E&O insurance policy to indicate continuous coverage.
 2. For a license suspended due to a lapse in E&O coverage for more than one hundred twenty (120) days but less than six (6) months, a Five Hundred Dollar (\$500.00) penalty fee;
 3. For a license suspended due to a lapse in E&O coverage for six (6) months up to one (1) year, a Five Hundred Dollar (\$500.00) penalty fee plus a penalty fee of One Hundred Dollars (\$100.00) per month, or portion thereof, for months six (6) through twelve (12).
- (b) Conditions for Reissuance of a Revoked License: Upon revocation of a license pursuant to T.C.A. § 62-13-112 for failure to maintain E&O insurance, any individual seeking reissuance of such license shall:

1. Reapply for licensure, including payment of all fees for such application;
2. Pay the penalty fees outlined in subparagraph (a) above;
3. Pass all required examinations for licensure, unless the Commission waives such examinations; and
4. Meet any current education requirements for licensure, unless the Commission waives such

FINGERPRINT UPDATE

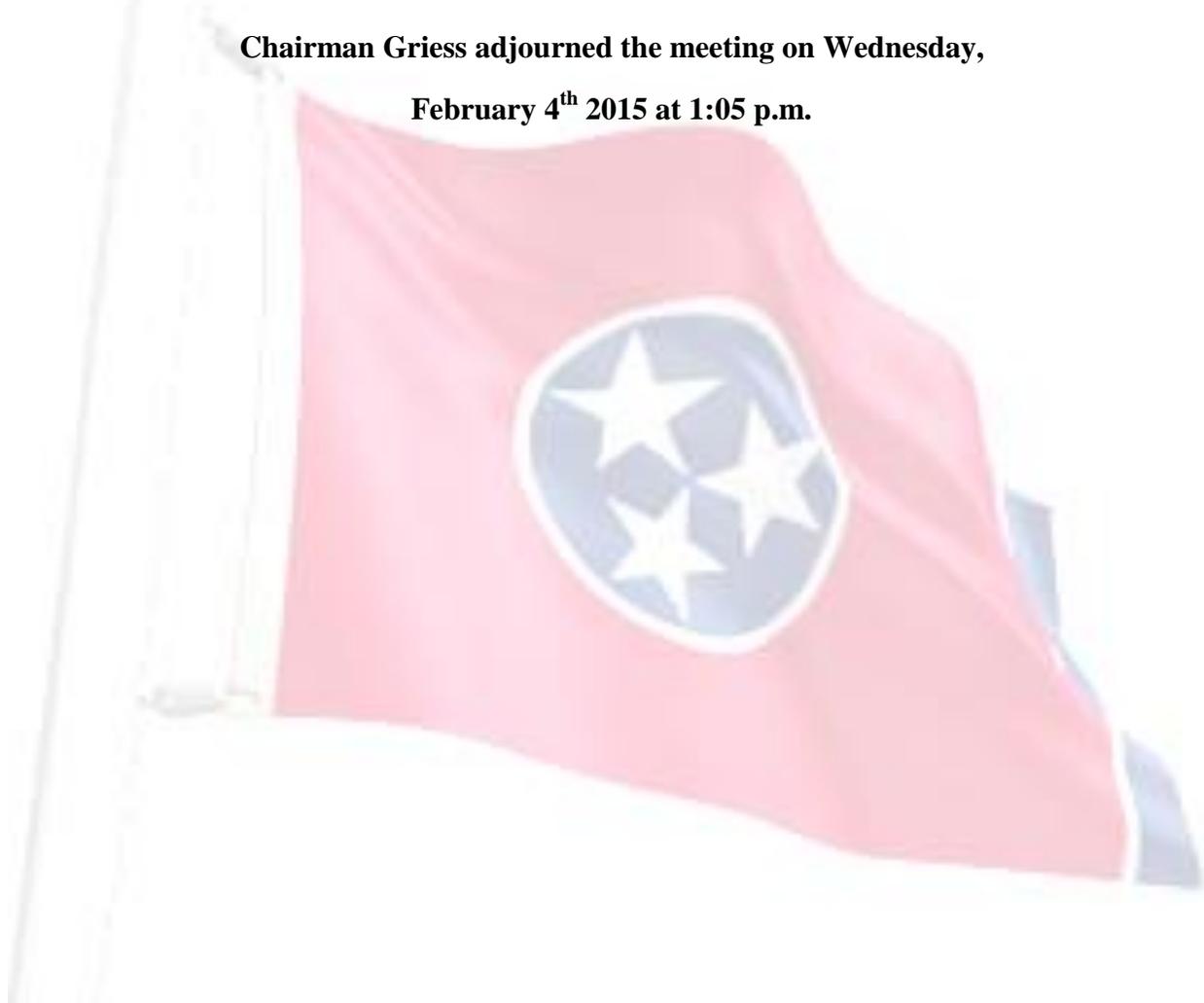
Ms. Maxwell presented an update on the fingerprint reports required as of 1/1/2014 pursuant to TCA 62-13-303(1); since 1-1-2015 there have been 331 individuals fingerprinted, 65 had an indication, 259 had no indication, and 7 were retaken.

Executive Director Maxwell asked Commissioners to vote on where the May and October meeting location will be. Commissioner Blume volunteered for Memphis meeting set up for May 2015, and Commissioner Hills volunteered for Kingsport meeting set up for October 2015.

Commissioner Blume made a motion for Memphis to be the location for May 7-8, 2015 meeting and Kingsport to be the location for October 1-2, 2015 TREC board meeting. Motion seconded by Commissioner Franks; motion carries.

Chairman Griess adjourned the meeting on Wednesday,

February 4th 2015 at 1:05 p.m.



February 5, 2015

The Tennessee Real Estate Commission convened on Thursday, February 5, 2015 at 9:02 a.m. in Meeting Room 1A of the Davy Crockett Building, 500 James Robertson Parkway, Nashville, Tennessee 37243. The following Commission Members were present: Chairman John Griess, Vice-Chairman Janet DiChiara, Commissioner Marcia Franks, Commissioner Gary Blume, Commissioner Wendell Alexander, and Commissioner Diane Hills. Absent from meeting Commissioner Austin McMullen. Others present: Executive Director Eve Maxwell, Education Director E. Ross White, Honorable Madeline D. Williams, Assistant General Counsel Robyn Ryan, Assistant General Counsel Keeling Baird, Paralegal Jennaca Smith and Administrative Secretary Kimberly Smith.

Commissioner Blume recused himself; he works with the Respondents. Commissioner Blume will not be voting on this case.

The formal hearing of TREC v John J. Quinn, III 12.18-129270A and TREC V. Billy Joe Stewart 12.18-12968A convened at 9:01 a.m. TREC Meeting February 5, 2014 before Judge Madeline D. Williams. The cases involved the failure to follow advertising guidelines. The licensee/respondent Mr. Billy Joe Stewart is currently the principal broker with Remax Real Estate Experts, LLC. The respondent, Mr. Stewart will pay Civil Penalty of \$1000 for violation of TENN. CODE ANN. 62-13-312 (b)(15). Mr. Stewart shall attend one regularly scheduled monthly meeting of the Tennessee Real Estate Commission within 180 days of February 5, 2015.

The respondent, Mr. Quinn, III will pay Civil Penalty of \$5000 for violation of TENN. CODE ANN. 62-13-312 (b)(4), TENN. COMP. R. REG. 1260-02-.12, TENN. COMP. R. REGS. 1260-02-.33, and TENN. CODE ANN. 62-13-312(b)(4) Principal Brokers license # 263284 will be downgraded to affiliate until Civil Penalty have been paid, and hearing cost. Respondent must retest and reapply for broker status. Mr. Quinn, III shall attend one regularly scheduled monthly meeting of the Tennessee Real Estate Commission within 180 days of February 5, 2015.

Commissioner Collins made a motion to accept the amended minutes of January TREC board meeting; Commissioner DiChiara seconded motion; motion carries.

**Chairman Griess adjourned the meeting on Thursday,
February 5th 2015 at 1:05 p.m.**